

1 trooper, a state captain, a state major now, that knows
 2 that it would violate the Crimes Code provision of the
 3 Commonwealth of Pennsylvania?

A. The Crimes Code?

Q. Yes.

A. No. I don't think I saw anything that I'm aware
 of that he violated the Crimes Code. He, being
 Detective Bush.

Q. Okay. And what, other than criminal?

A. I'm sorry. I have to retract that. I believe at
 some point, he, yes. He may have committed acts of a
 criminal nature by concealing his knowledge of the
 whereabouts of the children at some point in the
 investigation.

Q. So, you would then say that the acts of any
 person which would conceal the whereabouts of the
 children would be a crime?

A. No, sir. I would not say that.

Q. What act do you believe he, being Christopher
 Bush did that would be criminal?

A. I don't know that I said would be criminal. I
 said it's a possibility and what circumstances
 surrounding the children being recovered from Virginia
 and then that subsequent court order being obtained
 clarifying the custody of those children. He was asked

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1 Q. How many time, to your knowledge, have you known
 2 that you investigated whether a police officer had the
 3 power to act or not, a local police officer?

4 A. Well, I don't know that I personally have. I
 5 believe that issue has come up at various points many
 6 times in the Commonwealth. There's lots of case law on
 7 the subject.

8 Q. With all that knowledge, you couldn't find
 9 anything that Christopher Bush did wrong that you could
 10 refer someone for enforcement. Is that true?

11 A. I did not refer anything other than concerning
 12 Detective Bush to anybody other than Newtown Township
 13 Supervisors.

14 Q. Prior to Christopher Bush, how many times have
 15 you referred a decision -- prior to Christopher Bush,
 16 how many times, prior to the letter that you wrote to
 17 the Board of Supervisors about Christopher Bush, how
 18 many times have you written a similar letter?

19 MR. HENZES: To?

20 MR. PURICELLI: To the Board of Supervisors
 21 about a police officer.

22 THE WITNESS: I don't believe I ever have.
 23 BY MR. PURICELLI:

24 Q. After Christopher Bush, how many times have you
 25 written a letter to the Board of Supervisors?

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1 if he knew where the children were. He indicated he
 2 did. He refused to give the information up.

Q. Are you sure about that order of events?

A. I think at some point, that was the gist of the
 conversation with Sergeant Tripp.

Q. Okay. Oh, okay. Aside from the Crimes Code,
 Title 18, what other areas of law did the State Police
 enforce?

A. We are empowered, I believe, to enforce many
 different statutes, the Game Code, Fish Code, various
 others.

Q. Of the codes that you know of, what you're
 empowered, which, if any, were applicable to the Bush
 complaint and the David Bush investigation of
 concealment issues, if any? Just trying to eliminate
 all those things you can.

A. Well, we can look at a lot of things, Counsel.
 Whether or not we have the power to enforce or not, I
 don't know all of those.

Q. Well, if you don't have the power to do anything
 about it, you shouldn't be looking at it, true?

A. Not. That's not true. Maybe somebody else has
 power to look at something to discover a violation of
 municipal jurisdiction. Whether or not that is somebody
 else's purview to enforce or enact.

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A. I don't believe I ever have.

Q. Do you know any policy, rule, article, regulation
 of the Pennsylvania State Police that directs you to
 write such a letter?

A. I don't know. I don't believe there was such a
 policy or procedure that directs me to write such a
 letter.

Q. Okay. Would it be fair to say that you wrote
 that letter on your own choice? It wasn't an accident,
 in other words?

A. No.

Q. It was intentional, correct?

A. Correct.

Q. And when you wrote that, did you know whether or
 not it was likely that the Board of Supervisors would
 act on that letter?

A. I felt that was likely, yes.

Q. Okay. So, when the Board did act on it, it was
 not a surprise to you?

A. No, sir.

Q. Okay. So, now, getting back to Hill 1, the Use
 of Force, the first page indicates it's information only
 in block 5, correct?

A. Correct.

Q. And that is the block that says details of

1 allegations?

2 **A. It says type of allegation.**

3 Q. Type of allegation. When it was information
only, what made you think that an investigation was to
be started, limited or otherwise?

4 **A. Because this didn't come alone. It came in
conjunction with that. That came in conjunction, I
believe, either an e-mail type investigation.**

5 Q. You said this, you were referring to the 108?

6 A. **108, yes, sir.**

7 Q. These State Police forms, 101 and 108 generally
run in consecutive order like 102?

8 **A. I make no guesses as to how they're numbered
or --**

9 Q. So, you can't tell what a 101, 102, 105, 106 is?

10 A. **No, sir.**

11 Q. I'm going to show you the November 22nd, 2006
letter from Captain Willard M. Olyphant. Mark that.

12 -----

13 (Whereupon Exhibit No. Hill 3, Letter, was
marked for identification.)

14 -----

15 BY MR. PURICELLI:

16 Q. Have you ever seen this document before?

17 A. **I don't remember having seen this one,**

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1 **specifically.**

2 Q. Would that have been something that would have
been generated in the ordinary course of business from
the State Police at least for the type of complaint
we're talking about, the 101?

3 A. **Yes.**

4 Q. Have you ever seen such a type of document?

5 A. **Yes.**

6 Q. Do you recognize the document that would be sent
out as a matter of course in the ordinary course of
business for the purpose of investigating a complaint?

7 **A. It's not sent in every case. It's sent in a lot
of cases.**

8 Q. And how long have you known, if you have, Willard
M. Olyphant?

9 A. **Probably fifteen years.**

10 Q. Do you recognize that to be his signature?

11 A. **I have no idea.**

12 Q. In that fifteen years, have you ever worked with
him?

13 A. **Yes.**

14 Q. Did you have any conversations with him at all in
regards to Christopher Bush's complaint?

15 A. **I may have.**

16 Q. If you may have talked to him, what might you

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1 have been talking about?

2 **A. The contents of the complaint.**

3 Q. Okay. Okay. Were you involved in any part of
the process to make this a limited investigation?

4 **A. I may have.**

5 Q. Okay. But you have no specific recollection?

6 A. **No.**

7 Q. This document is dated November 22nd, 2006,
correct?

8 A. **Correct.**

9 Q. Do you know whether or not a verified complaint
is required in order for you to investigate the Use of
Force, 101?

10 **A. There is a -- I don't specifically recall the
list of what requires a verification or what doesn't.**

11 Q. So, your testimony then is you don't know if you
have to investigate or not if there is or isn't a
verified complaint?

12 **A. I'm sorry, sir. I'm losing you again.**

13 Q. If you got just the 101 and this cover letter,
e-mail or whatever that we don't have, I'm sure Randy
would tell me if he saw it and gave it to me, I'm
assuming?

14 MR. HENZES: Assuming one would exist. I
15 don't know.

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1 MR. PURICELLI: We'll talk about the Ruiz
2 stuff when we get down that far.

3 THE WITNESS: Uh-huh.

4 MR. HENZES: If your question is do you need
5 a written verification form to conduct a --

6 MR. PURICELLI: Yes.

7 MR. HENZES: So, you need a signed written
8 complaint to conduct an investigation. Did the Bureau
9 of Internal Affairs need a written complaint to conduct
10 an investigation? Is that what you're asking?

11 MR. PURICELLI: Yeah. Can you investigate
12 solely on the use of force?

13 MR. HENZES: You've got to understand, he
14 doesn't make that determination. That's a different
15 division that is making that decision. He is --

16 MR. PURICELLI: He'll tell me I don't know
17 and I'll move on.

18 THE WITNESS: One more time.

19 MR. PURICELLI: You know what? I'm going to
20 move past.

21 MR. HENZES: To your knowledge, do they
22 actually need a written complaint.

23 THE WITNESS: Not every case, if that is the
24 question, no.

25 BY MR. PURICELLI:

1 Q. Just so the record is clear, you can't tell me
 2 you didn't have a discussion with Captain Willard M.
 3 Oliphant about Christopher Bush to determine whether a
 4 limited investigation should be done and sent to you to
 5 do?

6 A. **I cannot tell you that I didn't have a**
 7 **conversation nor can I tell you that I did have it.**

8 Q. So, there would be a document that would speak to
 9 that. Is that true?

10 A. **That's not necessarily so. That him and I**
 11 **conversed about it?**

12 Q. Sure.

13 A. **No. I don't know there would be a document.**

14 Q. Are you sure?

15 A. **I'm pretty sure.**

16 MR. HENZES: Put it this way; do you have
 17 one?

18 MR. PURICELLI: We're going to get to it.

19 BY MR. PURICELLI:

20 Q. In your fifteen years of knowing him, have you
 21 known he was being sued?

22 A. **Captain Oliphant?**

23 Q. Yes.

24 A. **Sued?**

25 Q. Yeah.

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1 Did I describe, basically, the document to you properly?

2 A. **It appears to be a copy of a Philly.com.**

3 Q. I understand that. My question was, did I
 4 describe that accurately?

5 A. **I'm sorry, sir. I wasn't really listening. I'm**
 6 **sorry.**

7 Q. Do you need me to repeat it?

8 A. **How about you repeat it?**

9 Q. I handed you a document marked as Hill 4.

10 A. **Yes.**

11 Q. A Philly.com article posted, dated April 17th,
 12 2009 referring to a State Police officer, again, target
 13 of probe. Did I describe the document I handed you
 14 accurately?

15 A. **You did.**

16 Q. All right. This document, on the second page
 17 talks about a federal jury adversely ruling for Mr.
 18 Oliphant in 2003, correct?

19 A. **Correct.**

20 Q. I described that correctly?

21 A. **You have.**

22 Q. Did you have discussions with him about that
 23 before?

24 A. **I'm sure I did.**

25 MR. HENZES: It is so wrong. They should

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 1 A. **Yes. I believe I knew he was being sued.**
 2 Q. Did you have a discussion with him in regard to
 3 any lawsuit where it was alleged in 2009, that he had
 4 initiated an investigation into the activities of the
 5 Secret Service?

6 A. **Did I have discussions with him?**

7 Q. Yeah.

8 A. **Not that I recall.**

9 Q. Did he talk to you about it?

10 A. **At some point, he may have mentioned that.**

11 Q. What is your understanding of what it was about?

12 A. **Something about a registration plate being run,**
 13 **surveillance with a local cop and a Secret Service**
 14 **Agent, something along those lines. And I don't know if**
 15 **that is the result of reading about it, hearing about**
 16 **it, talking about it. That is my general knowledge of**
 17 **it.**

18 -----

19 (Whereupon Exhibit No. Hill 4, News Print,
 20 was marked for identification.)

21 -----

BY MR. PURICELLI:

22 Q. I'm showing you what is marked Hill 4, the
 23 Philly.com news print posted April 17th, 2009, involving
 24 the State Police Officer. Again, target of the probe.

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 1 sue that guy. The last line is wrong.
 2 MR. PURICELLI: The last line of the second
 3 paragraph?
 4 MR. HENZES: Off the record.

5 -----

6 (Whereupon, a discussion was held off the
 7 record.)
 8 -----

9 BY MR. PURICELLI:

10 Q. Well, this -- so, you are at least aware that
 11 there have been allegations against Oliphant about
 12 misusing his position in AIB?

13 A. **In where?**

14 Q. In Internal Affairs, BR?

15 A. **I was aware of both of these incidents.**

16 Q. Okay. When you got your assignment and when you
 17 were speaking with him?

18 MR. HENZES: No. It couldn't have been.

19 You said this is dated 2009. You said assignment.

20 MR. PURICELLI: 2003.

21 BY MR. PURICELLI:

22 Q. You were at least aware in 2006, were you, of the
 23 allegations that appeared on the second page of that
 24 news article?

25 A. **Regarding a phone conversation?**

1 Q. Yes. The jury coming back against him?

2 A. I was aware of that, yes.

3 MR. HENZES: Aware of the conversation. The
4 jury doesn't come until after that time.

5 MR. PURICELLI: After 2006?

6 MR. HENZES: After 2006, filed well after
7 because you got the two year deal. The Middle District
8 can take forever.

10 MR. PURICELLI: Big --

11 MR. HENZES: The allegation, yes, that is in
12 there. Whether the finding, is another story. So,
13 split them up.

14 MR. PURICELLI: He is the guy that's
15 important.

16 BY MR. PURICELLI:

17 Q. In 2006, if you spoke 2006 to 2007, we're talking
18 about 11/19/06, to whenever you got this Use of Force
19 Form, it was at least after 11/22/07 or after --

20 MR. HENZES: You can say.

21 MR. PURICELLI: 11/22. It had been after
22 that, that you actually had a conversation with him,
23 right?

24 THE WITNESS: I may have had a conversation
25 with him about other things prior. Relative to this,

1 Q. It is not permitted or is it, that someone from
2 Internal Affairs just gives you this without a
3 Director's specific instruction to do a limited
4 investigation like that?

5 A. I think that would be accurate.

6 Q. And would you have been relying on that if
7 someone was sent to you that --

8 A. I'm sorry.

9 Q. When you got the 101?

10 A. Right.

11 Q. Were you relying on the policy that said only the
12 Director could decide if this was to be a limited or not
13 investigation?

14 A. Well, I think that's accurate, yeah.

15 Q. Okay.

16 A. But it doesn't say only the Director. You've
17 read what it says. The troop commander has the input.

18 The Director has to concur on the decision.

19 Q. I read the policy but you don't recall having
20 such a conversation, do you?

21 A. I don't recall it, no.

22 Q. So, that would only leave one course of action.
23 Isn't it true, Major, the Director had to make that
24 decision?

25 A. No. That doesn't mean one course of action.

1 Q. That means him and I could have consulted and I don't
2 recall.

3 Q. How many times had you consulted with the
4 Director since 2006?

5 A. Many times, before 2006 and after 2006 about
6 IADs.

7 Q. How many of those times that you consulted with
8 him resulted in a limited investigation being assigned
9 to you to task to an officer?

10 A. Probably several, I would say.

11 Q. How many?

12 A. Several, I would say.

13 Q. Do you recall any other conversations, any other
14 cases?

15 A. That I recall? Lots of IADs assigned.

16 Q. That involved a decision process that you were to
17 do a limited investigation since 2006?

18 A. I don't recall anything specifically.

19 Q. Okay. And in any of these conversations you had
20 with the Director about making a complaint, limited or
21 not, how many were actually recorded to some type of
22 writing or record?

23 A. I don't know.

24 Q. Do you know of any?

25 A. I don't know of any. I don't recall any.

1 Q. Do you have training in wire tap law?

2 A. Yes.

3 Q. Do you have a certificate?

4 A. Hopefully, I have it somewhere.

5 Q. So, the answer is yes, not physically. You're
6 still certified to do wire tapping?

7 A. I believe I am, yes.

8 Q. And do you have to take a test to be certified?

9 A. I did.

10 Q. All right. Your understanding of the wire law,
11 correct me if I'm wrong, that without the consent of
12 both parties or a court order, wire tapping is not
13 permitted. A person cannot record another person's --

14 A. Counselor, my knowledge on current Wire Tap Act
15 related case law has not been used in over fifteen,
16 eighteen years. So, I would be using antique
17 information.

18 Q. So, you wouldn't know if there was a violation or
19 not if a person came up to you and told you, Mr. Henzes
20 recorded my phone conversation without my permission?

21 A. I think if that was in, and it was exactly that
22 scenario, yes. I think that wire tapping, be a
23 violation but we need to investigate it.

24 Q. What policy, rule, regulation, field regulations,
25 OM, anything within the State Police as State Police

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1 A. It could potentially be criminal.

2 Q. Is there any immunity that you're aware of for a
3 State Trooper, a State Police person of wire tapping
4 laws of Pennsylvania?

5 A. I don't know of any particular immunities for
6 State Troopers.

7 Q. Okay. In your career, do you know of any
8 exceptions written in any of the policies of the State
9 Police to any Crimes Code?

10 A. What, sir?

11 Q. Do you know of any immunities in the State Police
12 Regulations that provides an immunity to a State Trooper
13 for violating any of the Crimes Provisions?

14 A. I don't. Nothing comes to mind.

15 Q. Okay. I'm showing you what's been already marked
16 Christopher Bush 2. You already testified that
17 particular document came with what we have marked as, I
18 believe, Hill 1.

19 A. I believe so, yes.

20 Q. Okay. And it's been your testimony that you
21 don't recall your specific action once you got that,
22 correct?

23 A. Other than I assigned it to somebody.

24 Specifically, I don't know what you mean by I don't
25 recall.

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1 official, member can record the conversations of another
2 State Police officer member?

3 A. I don't know of a particular policy you're
4 referring to.

5 Q. You don't. Would you agree, you know of no
6 policy that allows one member of the State Police to
7 record the conversations on the telephone of another
8 member?

9 A. Are you talking about the recorded line at the
10 barracks?

11 Q. Yes.

12 A. Sure. A trooper can call on a recorded line and
13 be recorded on that conversation at any time.

14 Q. And there is a beep that tells him he is being
15 recording?

16 A. I believe there is. It's my understanding there
17 is.

18 Q. Do you know of any authority within the State
19 Police that allows a State Police official to record a
20 conversation of another trooper who doesn't know the
21 recording is being, taking place?

22 A. No. I don't know of any policy that permits that
23 without a person knowing the conversation is taking
24 place.

25 Q. Would such conduct potentially be criminal?

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1 Q. I'm trying to find out, what was the first thing
2 you did. Would it be fair then to say the first thing
3 you did was you assigned it. You just don't know where,
4 when you assigned it for an investigation?

5 A. I don't have a recollection of an exact date that
6 I assigned it, no.

7 Q. Okay. Do you have a direct recollection of
8 meeting with the person you were assigning it to?

9 A. At some point. Specifically to this, no. I
10 don't recall meeting directly with him.

11 Q. Do you recall how you assigned the investigation
12 to whoever you assigned it to?

13 A. Not specifically, no.

14 Q. Do you recall who you assigned it to?

15 A. Yes.

16 Q. Who?

17 A. Lieutenant Hile.

18 Q. Okay. Now, Lieutenant Hile is a criminal
19 investigator?

20 A. No. He is not.

21 Q. What is he?

22 A. He is, was, let's see. I believe -- I don't know
23 if he was the staff services section commander or the
24 criminal investigations section commander at the time I
25 assigned it to him. I don't recall.

1 Q. Do you know Hile?

2 A. Do I know him?

3 Q. Yes.

4 A. Yes.

5 Q. Do you know him in a personal nature?

6 A. What do you mean a personal nature?

7 Q. Do you go out drinking, socialize other than just
8 meeting him at work?

9 A. I have been to various trooper picnics with him,
10 retirement affairs. I don't know that we ever
11 personally had gone to dinner one on one together, to
12 lunch together. I worked with the guy many, many years.

13 Q. Did you consider him a friend?

14 A. Yeah, yeah.

15 Q. Okay. How did you -- why did you choose him?

16 A. Because it required a lieutenant in my mind, to
17 investigate because a sergeant was alleged to be
18 involved in wrong doing.

19 Q. For rank reasons?

20 A. Yeah, appropriate, for rank reasons.

21 Q. Do you recall giving him any instruction,
22 specific instruction?

23 A. Other than a discussion about looking into the
24 NCIC entry, I don't recall any specific instruction.

25 Q. Did you give him those instructions before he

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1 A. I don't know that prior to me seeing that report,
2 the incident report, I would have any knowledge of a
3 jurisdiction issue.

4 Q. We're sticking to the two documents, the verified
5 Complaint, the one you called an incident report, can we
6 agree then that those two documents don't raise any
7 flags about jurisdiction if you just look at them for
8 the first time?

9 A. Yeah, they do. He's claiming children were
10 contacted and met with the State Police and the person
11 filing the reports in Mansfield. And you have Sergeant
12 Tripp not entering the children, according to him, into
13 the NCIC and him entering the children into the NCIC.

14 Q. How did you know that that might be a
15 jurisdictional issue?

16 A. I don't think that I knew. Might be a
17 jurisdictional issue, that's a reasonable conclusion
18 after seeing that.

19 Q. Based on what?

20 A. What I just read to you.

21 Q. Just reading that, did you think that a police
22 officer couldn't put missing children on NCIC?

23 A. I believe without having jurisdiction, yes. It
24 was not proper to put them in.

25 Q. It turned out to be the case, that wasn't so.

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1 started his investigation or after?

2 A. I don't think so.

3 Q. You think it was after?

4 A. Yeah. It was after it started.

5 Q. What caused you to believe there was an NCIC
6 issue?

7 A. No jurisdictional reason for the entry.

8 Q. Well, looking at the two documents, the Use of
9 Force forms and the verified Complaint, is there
10 anything in those two documents that caused you to
11 question jurisdiction?

12 A. Sure.

13 Q. What?

14 A. Third paragraph down, July 2006, the undersigned,
15 Detective Bush employed by Newtown Township, entered
16 David Bush's children.

17 Q. What did you know prior to this being sent to you
18 about the Davis Bush incident?

19 A. Prior to it?

20 Q. Yes.

21 A. I don't think I knew anything prior. I knew
nothing about this prior to this coming to my attention.

22 Q. So, knowing nothing about that event, what in
23 that paragraph would have caused you to think that it
24 was jurisdiction involved?

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1 Isn't that true?

2 A. No. I don't know that I would say that that was
3 so at all. I would say it was not a violation of the
4 NCIC policy as determined by the union.

5 Q. What violation would it have been then?

6 A. A violation of the Municipal Local Police,
7 Municipal Jurisdiction Act.

8 Q. The one your attorney asked Chief Counsel's to
9 investigate after this lawsuit. Is that true?

10 A. I don't know if we asked him to investigate
11 anything.

12 Q. Did the legal research?

13 A. I think we asked for copies of the section. You
14 have to ask him what he asked for.

15 Q. Before your attorney asked Chief Counsel to do
16 legal research, you didn't know anything about those
17 laws, did you?

18 A. Yeah, I did.

19 Q. Why didn't you say, oh, it violates those at that
20 point?

21 A. Why didn't I say that to who?

22 Q. Chief Counsel office. Did you tell them that?

23 A. I believe that the detective acted without
24 jurisdiction, yes.

25 Q. Did you tell anybody that?